



**Award Number 17569**

**Docket Number SG-17899**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Murray M. Rohman, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN**

**UNION PACIFIC RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company:

On behalf of Assistant Signalman H. H. Tucker for two (2) hours thirty (30) minutes' pay at the time and one-half rate for each day April 3, 4, 5, 6, 7, 10, 11, 12, 13, and 14, 1967, that he was assigned to work in violation of the Signalmen's Agreement. (Carrier's File: A-10425.)

**EMPLOYES' STATEMENT OF FACTS:** This dispute arose when from April 3 to 18, 1967, Carrier unilaterally changed the assigned hours and established starting time of a regular position in order that they would correspond with those of a System Tie and Ballast Gang working on the Utah Division during this period.

Previously, Mr. H. H. Tucker had been assigned to a position of Assistant Signalman having regular hours from 8:00 A.M. to 4:30 P.M. with 30 minutes for lunch, and his starting time was established at 8:00 A.M.

Beginning April 3, 1967, Mr. Tucker was required to work from 10:00 A.M. to 7:00 P.M. with one hour for lunch. He worked such hours on each of ten (10) consecutive work days from April 3 to April 14 and laid off on April 17 and 18. He worked none of his rest days during this period.

At issue are the following rules of the Agreement:

**"Rule 4. Basic Day and Starting Time.**

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(b) Where one shift is worked, or for the first of two or three shifts, the starting time shall be established between 6:00 A.M. and 8:00 A.M. For the second of two shifts, or second and third of three shifts, the starting time shall not be earlier than 12:00 o'clock noon nor later than 12:00 o'clock midnight. Starting time shall not be temporarily changed for less than thirty days, and shall not be permanently changed without at least thirty-six hours notice to employees affected."

**"Rule 7. Absorbing Overtime.**

Employees will not be required to suspend work during assigned hours to absorb overtime."

**OPINION OF BOARD:** Claimant was regularly assigned to position of Assistant Signalman, with an established starting time at 8:00 A.M., 30 minutes lunch and completion of assigned hours of work at 4:30 P.M. Commencing on April 3 until 14, 1967, inclusive, with the exception of his rest days, the Carrier changed the Claimant's starting time from 8:00 A.M. to 10:00 A.M., so that it would correspond with those of a System Tie and Ballast Gang during this period. Thereafter, the Organization filed the instant claim alleging a violation of Rule 4(b) and Rule 7, hereinafter quoted:

**Rule 4(b) provides as follows:**

"(b) Where one shift is worked, or for the first of two or three shifts, the starting time shall be established between 6:00 A.M. and 8:00 A.M. For the second of two shifts, or second and third of three shifts, the starting time shall not be earlier than 12:00 o'clock noon nor later than 12:00 o'clock midnight. Starting time shall not be temporarily changed for less than thirty days, and shall not be permanently changed without at least thirty-six hours notice to employees affected."

**"Rule 7—Absorbing Overtime.**

**Employees will not be required to suspend work during assigned hours to absorb overtime."**

The Carrier defends its action on the ground that it was in the process of performing a major rehabilitation program of the entire track structure. In order to accomplish this, a force from several crafts was assembled and in an effort to eliminate excessive delays, the hours of assignment were changed. In buttressing its position, the Carrier relies upon a practice as well as Rule 4(c), hereinafter quoted:

"(c) In determining and establishing starting times, repair and/or construction gangs shall be considered independently of regular maintenance forces."

The Carrier, furthermore, contends that under Rule 4(d), it has "the right to change the assigned hours of a position by giving thirty-six hours advance notice. Such advance notice was given with respect to Claimant's position and accordingly the period from 8:00 A.M. to 10:00 A.M. was no longer a part of his 'assigned hours'."

**Rule 4(d) provides as follows:**

"(d) When the established starting time of a regularly assigned position is changed more than one hour for period of more than thirty days, the employees affected may, within ten days from date of notice of change in starting time, upon thirty-six hours advance notice, exercise their seniority rights as provided in Rule 24. Other employees affected may exercise their seniority rights in the same manner. This provision will not apply when seasonal changes in starting time are made on a division or subdivision thereof."

In order to reach the crux of the instant dispute, we believe it proper to incorporate some basic principles. When is it proper to consider an alleged practice? In our view, where a Rule is ambiguous and subject to varying interpretations, in order to determine the intent of the parties we are pre-

pared to recognize an established past practice—one which both parties have consistently adhered to, for a substantial period of time; provided, it is properly pleaded by the party alleging such practice and proven. On the other hand, where a Rule is clear and unambiguous, an alleged practice may not be introduced solely for the purpose of varying or altering such unambiguous Rule.

As we analyze Rule 4(b), it is apparent that the Rule prohibits a temporary change in starting time for less than thirty days. In the instant dispute, the starting time was changed for a period of less than thirty days. Further, the same Rule provides that it shall not be permanently changed unless thirty-six hours notice be given to the affected employee. True, the Carrier gave the Claimant thirty-six hours advance notice, however, his starting time was not permanently changed—merely for the period from April 3-14, 1967, inclusive.

In addition, the Carrier's contention that it gave the Claimant the proper thirty-six hours notice under Rule 4(d), similarly, was improper. Rule 4(d) is concerned with a change in starting time for a period longer than thirty days. Hence, under the circumstances prevalent herein, it is our considered opinion that the Claim is valid.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

#### A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: S. H. Schultzy  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1969.